IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.6.2007

CORAM :

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

S.A.No.1187 of 1996

M.Prem Selvi .. Appellant/Plaintiff

Vs.

1. The Executive Engineer,
(Distribution) Electricity
Distribution Circle/South,
Tatabad, Coimbatore.

2. The Assistant Executive Engineer,
Anti Power Theft Squad,
Tamil Nadu Electricity Board,
Tatabad, Coimbatore. .. Respondents/Defendants

PRAYER : This Second Appeal has been filed against the judgment and decree of the learned Principal District Judge, Coimbatore, dated 5.7.1996, made in A.S.No.173 of 1995, reversing the judgment and decree of the trial Court, dated 25.4.1995, made in O.S.No.1835 of 1990, on the file of the II Additional District Munsif Court, Coimbatore.

For Appellant : Mr.R.Subramanian

For Respondents : Mr.N.Muthusamy

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J U D G M E N T

This second appeal has been preferred against the judgment and decree of the learned Principal District Judge, Coimbatore, dated 5.7.1996, made in A.S.No.173 of 1995, reversing the judgment and decree of the trial Court, dated 25.4.1995, made

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in O.S.No.1835 of 1990, on the file of the II Additional District Munsif Court, Coimbatore.

2. The suit in O.S.No.1835 of 1990, had been filed by the plaintiff, who is the appellant in the present second appeal, praying for the reliefs of declaration and permanent injunction.

3. The short facts of the case, as stated by the plaintiff, are as follows:

The plaintiff is the owner of service connection No.716, at Rathinapuri in Coimbatore and she is the owner of a Textile Unit registered as a Small Scale Industry. The sanctioned load of energy for the said service connection was 50 H.P. The Small Scale Industrial Unit is also having a generator with the capacity of 52.5 KVA for additional power supply. The generator was connected to 65 H.P. Textile Machinery, while 34.5 H.P. out of the sanctioned load of 50 H.P. had been put to use. Only 34.5 H.P. has been connected to the service connection, on 7.5.1990. Since the generator was under repair, the machineries connected to the generator of 65 H.P. capacity was not working.

4. The representative of the defendants' Department is said to have inspected the unit of the plaintiff, on 7.5.1990, without giving notice regarding the purpose of his visit. The representative of the defendants' Department had taken the signature of a labourer, who was not well-versed with the electricity system and that too, without telling him the nature and contents of the document, as the Proprietor of the textile unit was not in station on that day.

5. The second defendant had given the notice alleging that 65 H.P. energy from the supply given by the defendant had been connected to the generator thereby, using a total energy of 109 H.P, even though it was factually incorrect. To the notice, dated 18.5.1990, issued by the first defendant, the plaintiff had given reply notices, dated 23.5.1990 and 4.6.1990. Since the defendants were threatening to take penal proceedings and also since steps were being taken to disconnect the electricity service connection, without following the procedure established by law and without following the principles of natural justice, the plaintiff had preferred the suit to declare the proceedings of the defendants, dated 18.5.1990, as void, illegal and ultravires. The plaintiff had also prayed for a permanent injunction restraining the defendants, their men and servants from in any way making any demand or from disconnecting the service connection No.716 at Rathinapuri in Coimbatore.

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6. The case of the defendants is as follows:

The sanctioned load for service connection No.716 at Rathinapuri in Coimbatore is 50 H.P. + 5000 W, while the connected load of the said service connection is only 37.5 H.P. and 200 W. at the time of effecting supply as per the Test Report. There was no permission given by the Electricity Department to utilise the generator set, which was under repair at the time of inspection, on 7.5.1990. The plaintiff was taking electricity from service connection No.716 by unauthorised extension.

7. During the inspection, on 7.5.1990, since unauthorised use of electricity was detected by the Inspecting Authority, the defendants' Department had directed the plaintiff to remove the unauthorised load and to stop misuse of energy. The claim of the plaintiff that the generator was under repair and the machineries connected with the said generator were kept idle without working is false.

8. The defendants' Department had initiated the proceedings as per the rules and regulations and therefore, it is proper, valid and legal. Since the proceedings were initiated as per the terms and conditions of the supply of electricity, principles of natural justice were not violated. The person, who had signed the notice of inspection, is well-versed with the maintenance of the machineries and that the notice had been served on him since the Proprietor of the Unit was not available in the premises and therefore, the notice is valid and proper. If the plaintiff is aggrieved by the action taken by the defendants' Department, she had every right to prefer an appeal as contemplated under the rules and regulations of The Tamil Nadu Electricity Board relating to Supply of Electricity as well as the provisions of The Indian Electricity Act and The Indian Electricity Supply Act. The second defendant had found unauthorised user of load of 75.5. H.P. and the observation *Magazar* was prepared for the inspection and detection and it was attested by the *fitter-cum-Maistry* working in the textile unit of the plaintiff.

9. The second defendant had issued a show cause notice, dated 18.5.1990, to remove the unauthorised load and to report the same to the defendants within the stipulated time. The plaintiff, without complying with the requirements of the show cause notice, had rushed to the Court praying for the reliefs of declaration and permanent injunction. The suit is premature and there is no cause of action for the suit. Therefore, the suit has to be dismissed with costs.

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10. Based on the averments made on behalf of the parties concerned, the trial Court had framed the following issues for consideration:

> "1. Whether the plaintiff is entitled to the relief of declaration as prayed for?
>
> 2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
>
> 3. What other reliefs the plaintiff is entitled to?"

11. The trial Court, having considered the oral and documentary evidence placed before it and based on the contentions raised on behalf of the plaintiff as well as the defendants, had come to the conclusion that the Anti Power Theft Squad had inspected the textile unit of the plaintiff, on 7.5.1990, only after issuing the necessary notice as contemplated under the appropriate rules and regulations. Further, it had been held that the issue of notice for such inspection had been done properly by obtaining the signature of an employee of the textile unit. However, it was held that the defendants had failed to establish the misuse of energy from the service connection No.176 at Rathinapuri in Coimbatore. Therefore, the plaintiff is entitled to the relief of declaration that the proceedings issued by the defendants' Department, on 18.5.1990, are void, illegal, untravires and unenforceable and that the plaintiff is also entitled to the relief of permanent injunction as prayed for in the suit.

12. Against the judgment and decree passed by the II Additional District Munsif, Coimbatore, dated 25.4.1995, made in O.S.No.1835 of 1990, the defendants had filed an appeal before the Principal District Judge, Coimbatore. The following points were framed for consideration by the first appellate Court:

> "1) Whether the plaintiff is entitled to the relief of declaration as prayed for?
>
> 2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
>
> 3. To what relief?"

13. After perusing the records of the case and upon hearing both sides, the Principal District Judge, Coimbatore,

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had found that the plaintiff had the right to prefer an appeal to the appellate authority in accordance with the terms and conditions laid down by The Electricity (Supply) Act, 1948, applicable for the supply of energy.

14. It was also found that the proceedings initiated by the defendants' Department on the report of the Anti Power Theft Squad cannot be held to be contrary to any of the provisions of law or against the principles of natural justice. Since no proceedings had taken place, based on the report, the plaintiff could not be said to be prejudiced. Even if an adverse order was to be passed, the plaintiff could file an appeal against the said order, in accordance with the terms and conditions applicable to the supply of electricity as prescribed by The Electricity (Supply) Act, 1948. As a consequence, the lower appellate Court had held that in view of the plaintiff not being entitled to the relief of declaration as prayed for, the findings given by the trial Court for the relief of permanent injunction cannot be sustained. Accordingly, the lower appellate Court had set aside the judgment and decree of the trial Court by dismissing the suit in O.S.No.1835 of 1990, on the file of the II Additional District Munsif, Coimbatore.

15. Aggrieved by the judgment and decree of the lower appellate Court, dated 5.7.1996, made in A.S.No.173 of 1995, the plaintiff has preferred the present second appeal.

16. The second appeal has been admitted on the following substantial questions of law:

> "1. Whether the lower appellate Court was right in holding that the plaintiff/appellant should have waited for the completion of the enquiry by the respondents more so when there is no statutory bar for a civil Court entertaining a suit?
>
> 2. Whether the lower appellate Court was right in relying upon the observation *Mahazar* Exhibit B.4 when nobody connected with the same have been examined?"

17. The learned counsel appearing on behalf of the appellant had submitted that the lower appellate Court had erred in dismissing the suit filed by the plaintiff stating

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that the plaintiff should have awaited the result of the enquiry initiated against her, especially, when there is no statutory bar or prohibition against the filing of the said suit.

18. The learned counsel appearing on behalf of the appellant had also submitted that the lower appellate Court ought not to have reversed the findings of the trial Court without properly appreciating the evidence on record.

19. On the contrary, it has been stated by the learned counsel appearing on behalf of the respondents that the enquiry contemplated against the appellant has not been completed till date, in view of the pendency of the present second appeal on the file of this Court.

20. It was also stated that it would be open to the plaintiff to challenge any adverse order that may be passed against her on completion of the enquiry, in accordance with the procedure established by law. The suit filed by the plaintiff is premature and that the lower appellate Court had rightly dismissed the same.

21. On analysing the rival contentions made on behalf of the appellant as well as the respondents and on a perusal of the records available before this Court, it is seen that the main point for consideration arising in the present second appeal is as to whether the suit filed by the plaintiff/appellant is maintainable, in view of the availability of an alternative remedy provided under the terms and conditions relating to the supply of electricity prescribed by The Electricity (Supply) Act, 1948, and in accordance with the other provisions of law available to the plaintiff. It was held by this Court in TAMIL NADU ELECTRICITY BOARD REPRESENTED BY EXECUTIVE ENGINEER (OPERATION AND MAINTENANCE), PANTRUTI AND OTHERS Vs. CHAKKARAVARTHY ((2005) 2 M.L.J. 426), that the suit filed challenging the order passed by the authority of the defendants Department cannot be challenged, in view of the specific provision of the appeal provided under the relevant law applicable to the case.

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22. In the above circumstances, this Court is of the considered view that the appellant has not shown sufficient cause or reason to interfere with the findings of the lower appellate Court, dated 5.7.1996, made in A.S.No.173 of 1995. Accordingly, the second appeal stands dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1.The Principal District Judge,
Coimbatore.

2.The II Additional District Munsif,
Coimbatore.

3.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.Muthusamy, Advocate Sr 35122
+1cc to Mr.R.Subramanian, Advocate Sr 35170

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